IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal Revision Petition No.175/1993.
(Chandra Singh Vs. State of Rajasthan)

DATE OF ORDER : January 15, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. N.S. Bhati for petitioner.
Mr. J.P.S. Choudhary, P.P. for the State .

BY THE COURT :

In the present revision petition, petitioner Chandra Singh is challenging the judgment passed by the learned Munsiff & Judl. Magistrate, Osian in Criminal Case No.170/1986 on 13.03.1992 whereby the petitioner accused was convicted for offence under Section 341, I.P.C. and sentenced to pay fine of Rs.100/-, in default of payment of fine to undergo simple imprisonment for 10 days, for offence under Section 323, I.P.C. and sentenced to undergo simple imprisonment for 3 months and pay a fine of Rs.100/-, in default of payment of fine to further undergo 10 days' simple imprisonment and, for offence under Section 325, I.P.C. and sentenced to undergo rigorous imprisonment for one year and pay a fine of Rs.100/-, in default of payment of fine to

further undergo simple imprisonment for 10 days. The said judgment and order of conviction and sentence was affirmed by the learned Addl. Sessions Judge No.1, Jodhpur vide judgment dated 30.06.1993. Hence both these orders are impugned in this revision petition.

Without challenging the finding of the trial Court as to conviction of the petitioner for the offences charged against him, learned counsel for the petitioner stated that without assigning any reason the learned trial Court refused to grant benefit of Probation of Offenders Act to the petitioner. He contended that the lower appellate Court also committed grave mistake of law in refusing to grant benefit of probation to the petitioner. It is submitted by learned counsel for the petitioner that the appellate Court has observed in the judgment that there is no material on record with regard to previous adverse conduct and character of the petitioner but only on the ground that the injured was an old aged man the lower appellate Court refused to grant benefit of probation to the petitioner. It is contended by learned counsel for the petitioner that in view of the judgment of this Court in Leela & Others Vs. State, reported in 1988 (13) R.Cr.C. 76, if no material adverse to the accused is on record the benefit of probation cannot be refused and should have been granted. It is argued by the learned counsel for the petitioner that unless the report of the police officer is adverse and unless the

circumstances of the case in which the offence was committed are such which shock the consicence of the Court, the Court in view of the mendate of the legislature contained in Section 361, Cr.P.C. will have and can have no option but to deal with the case of the accused under the provisions of Section 4 of the Probation of Offenders Act, 1958 or any other similar provision.

I have gone through the judgment cited by learned counsel for the petitioner and carefully perused the impugned judgments.

According to provision of Section 360 and 361, Cr.P.C. which is mandatory in nature if the case of the petitioner is such which could have been dealt with under the provisions of Section 360 or 361, Cr.P.C. then obviously if such claim is made then Court is required to consider the case of the accused under Sections 360 and 361, Cr.P.C. It is true that the Court is required to record special reasons. In this case, obviously the trial Court did not consider this aspect of the matter and without assigning any specific reasons for refusing the benefit of probation passed the order of sentence. The application of the provisions of any beneficial legislation must not be withheld by the Court without cogent and specific reasons. Recently, the Supreme Court, in the case of **Chhanni Vs. State of Uttar Pradesh**, 2006 (3) Crimes 57 (SC), while dealing with the provisions of the Probation of Offenders Act, 1958 vis-a-vis

provisions of Section 360 and 361 of the Code of Criminal Procedure, made it clear that the provisions have a paramountcy of their own in the respective areas where they are applicable, the legislature in its wisdom has nonetheless obliged the Court under Section 361 of the Code of Criminal Procedure to apply one or the other beneficial provisions, be it Section 360 of the Code or the provisions of the Probation Act and it is only by providing special reasons that their applicability can be withheld by the Court.

In the present case, the incident took place in the year 1986 and the petitioner has been convicted for offence under Section 325, I.P.C. and sentenced to undergo rigorous imprisonment for one year, before the trial Court no adverse previous record was produced, however, for refusing the benefit of the Probation Act the trial Court did not consider the fact that no adverse previous record was produced by the prosecution and, therefore, in view of the judgment of this Court in Leela & Others Vs. State (supra), so also principle laid down by the Supreme Court in the above case, this petition deserves to be partly allowed.

The petition is accordingly partly allowed. The order of conviction of the petitioner passed by the trial Court is maintained, however, taking into consideration the provisions of Section 361, Cr.P.C. and in view that there is no adverse

material against the petitioner as to his conduct and character brought to the notice of the trial Court, it is directed that the petitioner shall be released upon his executing personal bond of Rs.10,000/- alongwith surety of the like amount to the satisfaction of the trial Court within a period of two months to keep peace and be of good conduct and behaviour. The impugned judgment is modified to the extent indicated above.

(Gopal Krishan Vyas) J.